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**PRESS CONFERENCE ON DAVID HICKS  
DIGITAL VIDEO CONFERENCE WITH STATE DEPARTMENT  
WASHINGTON  
7 FEBRUARY 2007**

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**Val ADAMCYK:** Good morning, hi, good evening, can you hear us? Hi, yes?

**John BELLINGER:** And good evening here from Washington.

**ADAMCYK:** Terrific, hi, good evening. My name's Val ADAMCYK, and thank you all so much for coming to the Office of Public Affairs. I'd like to introduce to you John Bellinger who's the Deputy of State Legal Advisor, and Sandra Hodgkinson, who's the Deputy in the Office of War Crimes Issues at the State Department. They're going to say a few words, and then we're going to take your questions. We'd like for as

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many people as possible to be able to ask questions, so because of that we'd like to please not have follow up questions, we just won't be able to take the follow ups. So what I'd like to do is I'll just be passing around the microphone from person to person and see if we can get as many people in as possible. Mr Bellinger, I understand, may have to leave after about a half hour or forty five minutes, and Ms Hodgkinson may be able to stay a bit longer, but if you just let us know when you have to go, we'll just wrap it up here, okay.

What we'd like to ask you please is there's a camera right there, if you can look into the camera when you're asking a question. And if that's good enough we'll get ourselves started. Hi, welcome, thank you so much for speaking to us today.

**BELLINGER:** Okay, very good, well, I am John Bellinger, the Legal Advisor at the Department of State, and Sandy Hodgkinson is the Deputy Director of her Office of War Crimes, and also a navy Judge Advocate General Lawyer, so she is an expert in the military legal system. We're happy to be with you all through the marvels of video technology, so good morning to you all in Australia. I know you're very interested in the developments in the Hicks case and we're happy to try to take your questions. I'll have to beg a little bit of forbearance from you, since some of the technical questions we may have to refer to our Defence Department, Military Commission colleagues, but we will do the best we can to answer your questions.

So as you know, Mr Hicks was charged on Friday with two counts under

the new Military Commissions Act, providing material support for terrorism, charge number one, and two – attempted murder in violation of the Law of War. And these are charges under the new Military Commissions Act which was passed by our Congress last fall. We are very anxious to move forward with the trial of Mr Hicks, and with others. Two other individuals, a Canadian and a Yemeni, actually Mr Handan, who was the named Plaintiff in the Supreme Court case were charged at the same time, and we hope that there will be, expect that there will be, additional charges under the Military Commissions Act that will come out in the near future.

I say that we are anxious to move forward with these trials because it has been a frustrating experience for our Administration and for our Departments to not be able to move forward with these trials. As you know, Mr Hicks had been charged previously under the President's Executive Order, creating the Military Commissions, but that, that trial was caught up in litigation, which has taken the better part of two years to resolve, and ultimately leading to the Supreme Court's decision in the Handan case last June.

And just to recap here on a little bit of background it is important – in that case the Supreme Court found not that the President lacked the power to have Military Commissions, but that he had the power to have Military Commissions, but had not set them up the right way by Congressional Statute. So that meant we had to go back to get the necessary implementing legislation, and that was one of the reasons that we moved

very quickly in September and October of last year to pass the new Military Commissions Act.

There are a lot of questions here in Washington, and I suspect that maybe in Australia as well is why was that pushed through so quickly last fall, was that pushed through for political reasons? And the answer I can tell you was no, not at all, it was the Supreme Court had concluded that we could not move forward with trials of any of the individuals in Guantanamo until we had implementing legislation. If we had waited until after the elections, had waited until the new Congress, we would have lost something like five or six months in being able to move forward.

So we pushed very quickly to have the necessary implementing legislation to create the Military Commissions with the statutory basis the right way last year. Since the Statute was passed, our Defence Department and Justice Department have been working around the clock to create the necessary Military Commission rules, procedures and the specific elements of all the crimes so that the Commission trials could move forward. Those rules, as you may know, were all issued just about two weeks ago, were all available on the public record, and then the Office of the Military Prosecutor moved very quickly to then charge Mr Hicks, Mr Handan and Mr Cotter, the Canadian, under the new Statute, under the new rules. And Sandy will, will – before we turn over to questions in a moment – will just tell you a little bit about how the sequence will work from here.

Let me just address up front what I know as I understand from seeing your questions and the coverage in the Australian media. Let me just address up

front what I think seems to be the primary question on people's minds is is this a retrospective law? No, we do not think this is a retrospective law. The mere fact that these offences were created in a Statute passed in 2006, but covering activities by Mr Hicks in 2001, does not make this a retrospective law. Military Commissions under our laws and War Crimes Tribunals internationally try offences that are triable under the laws of war. And just to give you an example, the Nuremburg Tribunals, and international tribunals like the International Tribunal for the former Yugoslavia, and for Rwanda, all use offences that were obviously put down on paper much later than the, than the conduct actually that was in question. So German nationals in Nuremburg, crimes in the Balkans or in Rwanda, these were all individuals who were tried with offences that were put down on paper subsequently but were codifying crimes that existed under the laws of war, that were violations under the laws of war.

Historically, committing acts of terrorism is a violation of the laws of war, and we think it's equally clear that providing aid or material, significant support to groups that are engaged in terrorist acts is similarly a violation of the laws of war that may be tried by Military Commissions. So we do not think that this a retrospective law, this is in fact merely a codification by our Congress in the Military Commission Act of offences that are triable by Military Commission under the laws of war, and I will simply say obviously this is something that, like other issues at trial that Mr Hicks is free to challenge, and no doubt these are things that will be litigated at his trial.

So with that, let me just ask Sandy to say a word about the sequence from here for the next four or five months, and then we'll turn it over to you for questions.

**Sandra HODGKINSON:** As many of you are aware, last Friday what took place was the swearing of the specific charges that Mr Bellinger has read out. That is just a first step in the process of moving forward with the Military Commission. From here, now that the charges have been sworn, they have been referred to the Legal Advisor to the Convening Authority, which is a separate entity that will then review again the facts and the charges, and then decide which ones to actually refer forward to the actual Military Commission. Last Friday as you may be aware Defence Counsel and Mr Hicks were provided notice of what these charges were, and that's some of the basis for many of the stories that many of you are interested in.

From here, what we anticipate will happen next is the Convening Authority will again go through this, the Legal Advisor to the Convening Authority, and the Convening Authority, and then forward on whichever charges and specifications they deem as appropriate for the actual Military Commission. Within thirty days of the Convening Authority moving these charges forward, there will be the opportunity for an arraignment process, where Mr Hicks will be able to plead in his case, and at the same time also from the Convening Authority moving forward with the charges, from that date there will be a hundred and twenty days during which time the actual Military Commission would need to be constituted. That means the Military Judge would be selected, and/or the people that will serve on the

Commission, as well as any members that may be – members of the military – that are sitting in on the Commission. So the entire Military Commission will be constituted at that point.

As the process moves forward, there will be opportunities for different motions, there will be opportunities consistent with all of the rules for many of the issues that have been raised, and concerns to be actually litigated before the Military Commission.

**BELLINGER:** Okay, with that, why don't we turn it over to you all in Australia.

**ADAMCYK:** Okay, we'll give the first question to Sandra. I'd like you please to address your questions to the camera there, and if you could please give your name and your media affiliation.

**QUESTION:** Mr Bellinger, Sandra O'Malley from Australian Associated Press. You talked about the possibility that there would be additional charges. Would that relate to David Hicks, and what sort of charges could they be?

**BELLINGER:** I'll just have to tell you I am not aware of any additional charges that would be brought against Mr Hicks, I don't think there would be to my knowledge. When I mean additional charges, there would be additional charges brought against other people. As you know, prior to the Supreme Court's decision in Hamdan, we had approximately ten individuals who had been charged under the previous Military Commission rules. I think more would have been charged, but we got

caught up in litigation. Now that we have the new Military Commission Statute and the new rules, we expect to get going again. The first three people have been charged, and we expect that there will be charges now brought against a number of other people.

The astriments that we have from the Defence Department are that as many as forty to eighty individuals could ultimately be charged and tried in Military Commissions. Let me be clear that we do not believe that the individuals in Guantanamo have to be charged with crimes in order to be held. This is obviously one of the great controversies internationally, because we're not used to having people held for long periods of time without trial. All of us, and certainly Sandy Hodgkinson and I, are used to, in our own system, seeing people held and, and then tried or released. The difference here of course is that the individuals captured or detained in Afghanistan or Pakistan were detained not because they were criminals, they were not detained by our policemen, they were detained by our soldiers or turned over to our soldiers, and are being held because they were in combat with us, either because they were members of the Taliban or Al Qaeda, but we have wanted, that said, to try as many of them as we can if we think that they have committed offences, and we really are looking to trying to move forward with these trials, which we think will be full and fair.

**QUESTION:** Cynthia Banham from the Sydney Morning Herald. There's a lot of concern in Australia, including among members of the government, about the fairness of any trial that David Hicks would

receive under one of these Military Commissions, and there are two major reasons cited for this – one is the admissibility of hearsay evidence, and the other the admissibility of evidence taken under coercion. What would you say about these concerns?

**BELLINGER:** Thank you for that. The – there were numerous changes that were made to the Military Commission by Congress in passing the Military Commission Act, and we think that the procedures will be completely fair, and full procedures to allow due process, to allow appeals into our Federal Courts.

With respect to the two issues that you raise, hearsay evidence – there can be – hearsay can be limited, it can be admitted in very limited circumstances. But let me also say in international tribunals like the International Court – Tribunal for the former Yugoslavia, or for the International Criminal Court, hearsay evidence can be admitted. And I would ask you to consider – because this is one of the things that's so difficult about these trials.

Our normal criminal trials in all of our countries are set up for cases where the witnesses and the evidence are at home. To try and collect evidence or statements made by people in Afghanistan or Pakistan and to try to get that witness and force them to appear in Cuba is really quite difficult. So we are facing trying to do international criminal justice when witnesses are scattered across the world. That's why in other international tribunals, hearsay evidence is permitted.

With respect to coercion, any evidence – if the Defendant raises a question about how a statement was obtained, if it was determined to be obtained through torture, it would be flatly not allowed. If an individual asserts that the evidence or statement was obtained through coercion, the Judge will essentially have a hearing to determine the circumstances of what happened, and this is just what would happen in a US Court if a Defendant says that he is somehow mistreated, the Judge would say what happened to you, and then he would determine was the questioning so significantly coercive that it would violate his due process rights. In this case, the Judge will – it is assumed that the evidence will not be admitted if the accused questions that it came from coercion, unless the Judge determines that it would not deny him a fair trial, and would be in the interests of justice to admit it.

And then one more important point – if the statement was taken after the passage of our McCain Amendment, which prohibits cruel, inhuman or degrading treatment, then it cannot have violated the McCain Amendment. Before the date of the McCain Amendment, if an accused says the statement was the result of cruel, inhuman or degrading treatment, obviously the McCain Amendment was not on the books at that point, so it couldn't have been violated, but the accused can still raise that as an issue, and the Judge will still look at the circumstances of the alleged coercion and determine whether it would be fair or in the interests of justice, or would deny the individual a fair trial to allow the information to be introduced. And I think it's very similar to what a Judge would do in one of our normal Federal Courts.

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Let me just end with this. In our Federal Courts, and I don't know the way it is in Australia – in a common law system, we do not have a flat statutory bar in the US Courts that says no evidence, or no statements derived from coercion may be introduced. There's not a statutory rule. It's up to the Judge to listen to what happened, and then determine whether it would violate the due process rights of the Defendant.

**QUESTION:** Tim Lester from the Nine Network with a question on process, I guess, for you, Sandra. John has said that David Hicks has been charged, but am I right in saying that we neither know for certain what charges will go to the Military Commission, or when that Military Commission will occur, because the Convening Authority may very well choose to change or delete some charges, one. Two, the one hundred and twenty days doesn't start ticking until the Convening Authority signs off, and that hasn't occurred. And three, if I read what you're saying correctly, the one hundred and twenty days isn't to the beginning of the Military Commission, it's only to the forming of those who will carry out the Military Commission.

**BELLINGER:** I'll have to say I was a little loose in my language, and you're a better lawyer than I to have gotten all of that right. Sandy will – that is a correct statement, the charges have only been sworn so far, and Sandy if you'll walk through actually the precise details.

**HODGKINSON:** This is correct, and it – and it's not unlike the regular uniform code of military justice procedure for Courts Martial. There are procedures which in the Courts Martial process are known as the

preferral, which is before the referral of actual charges. And that is much more like where we're at right now. So you are correct in that yes, the Convening Authority may modify, dismiss, alter, change in any way these charges before they actually go forward and Hicks is officially charged.

Nonetheless, he has already been notified of these charges that were sworn for the opportunity to begin to prepare his defence with his attorneys et cetera. As soon as the modification, or change, if there is one, were to occur by the Convening Authority, he will likewise again be notified. But it is within that time period a thirty day period of time in which he must plead guilty or not guilty through the arraignment process.

You are also correct that the hundred and twenty days that begins then is until the Military Commission is constituted. So again, while we're moving forward in the process, this part of the process is very similar to a regular Court Martial, similar to what we have for our military members, and so there are various stages at which information becomes available to the accused.

**BELLINGER:** Thank you, helpful clarification.

**QUESTION:** Oh, hi, Rob Taylor from the Reuters News Agency. I just wanted to – if I could start with a quick anecdote. Just a couple of months ago I was in Indonesia, and the head of their Special Forces, which has a fairly notorious human rights record – I asked him about their record, and he said “Well, no one's clean on this, look at the US, and what's happening in Guantanamo Bay”. Could I ask you, Mr

Bellinger, to comment on how much damage do you think this has done globally to the respect for US justice?

**BELLINGER:** It's a fair question. It's – these sorts of statements made by other countries about Guantanamo are distressing to us, and we have a very strong human rights record around the world. Secretary Rice regularly presses human rights issues with different countries around the world, and we are concerned when people raise questions about Guantanamo, and obviously there's been a substantial amount of criticism about it. Much of the information has been inaccurate. I think that critics have seen the pictures of Abu Grabe, they hear statements made about what allegedly happened at Guantanamo, and they assume that terrible things have happened. Obviously there have been – there have been some instances of misconduct at Guantanamo, but after numerous investigations those have been relatively few, very few. But we are concerned about the fact that Guantanamo has become a lightning rod for criticism, that, that threatens our record on, on human rights. So we are concerned about those issues, and it's one reason why we work very hard to explain why we are holding the individuals in Guantanamo, what they have done, and to begin to move forward with trials of individuals like Mr Hicks.

**HODGKINSON:** If I may. If I could also add in one additional thought on that, which, again, when working with Indonesia or other countries on our broader human rights and democracy promotion programmes, one of the critical things that we always press is that when

there are allegations that investigations are conducted, that people are held accountable, that laws that are in place are re-examined, that procedures are modified, and I think as you will see in looking at the record from Guantanamo Bay that there has been in cases of allegations of abuse, there have been investigations, there have been individuals held accountable for various aspects of detainee policy, and how they've been carried out. And evolution – as part of the evolutionary process, that the administration has worked both with Congress and on its own to clarify and update rules and procedures consistent with this.

So while it does – we do continue to get criticism, and it is a challenge for us as we move forward. We would hope and continue to press other countries, as responsible democracies, to take these steps in also addressing their human rights records when there are allegations of concern.

**QUESTION:** Samantha Maiden from the Australian Newspaper. Good morning to you both, or good evening where you are. One of the questions that's raised in Australia, or one of the claims, at least, is why an Australian citizen is being subjected to this process, when US citizens have not. I was wondering in your role as a Legal Advisor to the US Government, you might wish to comment on those claims, and also our attention's been drawn to some comments you made in September, 2006, where you said there were different categories of people involved, some have never set foot in the US, and when they were involved in incidents they were not crimes in the laws of the US, they were not on the books, but if they were planning attacks on the US – planning attacks

against the US, they should be dealt with. I am thinking David Hicks falls into that category.

**BELLINGER:** Well, it's a good question. The difference is that we have jurisdiction over the conduct of our own nationals around the world. That's why for example John Walker-Lindh was tried in our own Federal criminal Courts. In most cases, though, our Federal Courts did not have extra territorial jurisdiction over activities of foreign nationals in Afghanistan or Pakistan if they had not yet actually conducted a terrorist attack. So that is one reason for the differentiation.

A second is that whereas our own citizens we think have violated our Federal criminal laws in the actions that they took, members of the Taliban and Al Qaeda were fighting us in an armed conflict. Again, it's important to go back to look at why these individuals were picked up. They were not picked up as part of a mass police operation. Our soldiers did not go armed with arrest warrants looking for people to arrest. They went to clear out the training camps in Afghanistan, to disband the Taliban and Al Qaeda, and they picked up individuals who were fighting us in an armed conflict. And so the appropriate body of law – we detained people there pursuant to the laws of war, not pursuant to arrest powers. That was our authority to detain them. And we try them under the laws of war in Military Commissions, that's why we think it's the appropriate place to try them.

**QUESTION:** David Cooper from the Australian Broadcasting Corporation. And this goes on from an earlier question,

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forgive me if you did mention it, but how long does the Convening Authority have, or how long do you expect they will take to sign off on the charges? Can it be done by the middle of February, say, or will it take much longer than that?

**HODGKINSON:** At this time, I don't think – I'm not certain that it will be done by the middle of February, that's coming up shortly. But it could be within a few weeks to more than a month time period in which the Convening Authority and the Legal Advisor to the Convening Authority in particular, will take a careful look at the information that's contained in the charges and the specifications and the supporting information and evidence that's available, and, and certainly they will take this time as appropriate so that they can do a thorough review. So several weeks to more than a month is what's likely until the next phase for the Convening Authority to move forward.

**QUESTION:** Hi, Paul Maley from the Canberra Times. The chief prosecutor has said, as you've said today, that the majority of Guantanamo Bay detainees will not be tried, and will be released or held for the duration of hostilities. Can you tell us when hostilities will be determined to have ended?

**BELLINGER:** Yes. This is a good question, and it's one of the – it's one of the difficulties that we grapple with. It is the indefinite nature of the conflict with – particularly with Al Qaeda. Let me say two things.

One, in any kind of a war, you don't know at the beginning how long it is going to go, and so you don't at the beginning say we don't know how long it's going to go, so we will just release everyone. Similarly, with this conflict with the Taliban and Al Qaeda, the same thing, even though this probably will go on much longer than a traditional war, World War I or World War II, and could go on for a very long time. Again, the answer can't be well, because it may go on for a very long time, therefore we should simply release individuals who are still fighting us. I think without a doubt there's still a war going on in Afghanistan, you simply talk to Mr Carzai about that, and you see the number of Taliban who are fighting and being killed in confrontations with coalition forces every week. And even members – even the members of the Taliban who we have released into Afghanistan have gone right back to fighting. Similarly, Al Qaeda continues in a conflict with us around the world.

So this is a good question, as we will not I think in either case see a traditional end of hostilities where there is a – an armistice on a battleship and the white flag is run up. What we have tried to do to address this different sort of situation – again, it's not to say well, because it's going to go on for a long time we'll just release everyone. What we've tried to do is to take – get countries to take responsibility for their own nationals, if we cannot try them here. And in other cases, we will – we have a review process called an Administrative Review Board, in which we review every year the case of every individual in Guantanamo to determine whether essentially the conflict is still ongoing with respect to that person.

Now, this is unusual, because in any kind of a normal conflict, you do wait for essentially a mass surrender. But here, if an individual persuades us that the conflict has ended with respect to him, that individual can be released or transferred back to his home country, and many individuals have been released or transferred as a result of that process.

**QUESTION:** Michelle Grattan of the Age. Just going back to the timetable, is it possible that Hicks' trial might not have started in a year from now?

**HODGKINSON:** It's too early to speculate as to what might be possible, I mean, the intention is to move forward swiftly. Certainly that is something that we have assured the Australian government of, we are working actively to ensure that his case does move forward, and as you can see, from the quick turnaround between the recent finalisation of the actual procedures and moving forward with Mr Hicks' case, that he is clearly an individual that we're doing what we can to move forward quickly.

As I'd indicated, the anticipated timetable is thirty days from a couple of weeks of now, when the Convening Authority moves forward, that he would be arraigned, and again the Military Commission would be constituted within a hundred and twenty days of the Convening Authority moving these charges forward. So there's no reason to believe that it wouldn't continue to move expeditiously at that point.

Obviously there will be motions raised by Hicks' Defence Counsel, there'll be litigation that has to go back and forth before the Judge, and so how

long the trial actually takes, one would see. But certainly the intention is to move forward as quickly as possible, and that's evidenced by Mr Hicks' case moving such as it is right now.

**BELLINGER:** Let me just add there. We are anxious to get started with the trials of Mr Hicks and others as soon as we can. The – now, I have seen statements as early as today from his Defence Counsel saying that they need more time to prepare. But from the perspective of the prosecution, we really do want to move forward. It's – it's – although we do not believe we are required to try any of these individuals, for those who we believe and have evidence – specific evidence that they have committed violations of the laws of war, we want to move forward. It has been frustrating for us that we have not been able, five years later, to move forward with these trials. So it would be surprising to me if it were a lengthy period of time before we can start with the first trials.

**QUESTION:** Peta Donald from the Australian Broadcasting Corporation. One of the lawyers for David Hicks, David McLeod, has been on radio here this morning criticising the fact that the charges were sworn against David Hicks the day after his legal team left Guantanamo Bay, and that they had no indication that the charges were coming, and if so they might have been able to stay and speak to their client about them. Do you have any explanation for that timing?

**BELLINGER:** Well, we have moved forward as quickly as we can to come forward with the charges. There were charges against Mr Hicks originally which both he and his lawyers were fully aware of,

including the facts, so they – his lawyers have had regular and full access to him, and I think he has had a full and zealous representation both in the United States and Australia by his lawyers, so I don't think that it is fair to say that because the charges came after they left that they were somehow taken by surprise.

**QUESTION:** Mr Bellinger, Sarah Smiles here from the Age. Recently we heard allegations from David Hicks' lawyers that there were posters hung up in Guantanamo Bay depicting pictures of Saddam being executed with the slogan "This is what happens if you don't cooperate". I was just wondering if you could clarify what the content of those posters was, and why they were hung around the facility?

**BELLINGER:** That's the first I've heard of those, and I just simply don't have any information about it, it is news to me. We will check and see if we could run that down for you and get back to you through the Embassy.

**QUESTION:** Mr Bellinger, Alison –

**BELLINGER:** But I will say that we do not – that we do not threaten individuals in Guantanamo, but I do not – I am not aware of anything about posters having to do with Saddam, and I think you know that the – the US government is on record from the highest levels, from the President, saying that we were very disturbed by the way the Saddam execution was carried out. Sorry to interrupt, go ahead.

**QUESTION:** Mr Bellinger, Alison Rann from Sydney's

Daily Telegraph newspaper. John Howard said as recently as last night that he was very unhappy with how long it had taken David Hicks to be charged. Do you believe it has been a breach of human rights that Mr Hicks has been held for five years with no charge?

**BELLINGER:** I don't believe it's been a violation of human rights for him to be held for five years with no charge. We think – there have been numerous individuals in numerous wars, World War I, World War II, who have been held for a long period of time without being charged. There's not a requirement for individuals who are fighting in a war to be charged, and so it is not a violation of their human rights.

On the other hand, we have also been unhappy that we have not been able to move forward with these trials. As I've said, Mr Hicks was charged several years ago, and we have wanted to move forward with these trials, and it has been frustrating to us that we have had to essentially reset and start over again.

**QUESTION:** Rob McGuirk from Associated Press. You've said you don't need to be charged to be held at Guantanamo. When these three are tried, if they're acquitted, what will happen to them, will they be automatically released? And some other countries have had some success in getting their nationals repatriated from Guantanamo, including Britain. Is it possible people who are more guilty than the three suspects on trial – to stand trial, have already left Guantanamo Bay.

**BELLINGER:** Well, I would not want to get into trying to

draw lines amongst, or distinctions amongst particular detainees. We have had a number of countries around the world who have come forward and agreed to take responsibility for their nationals by either prosecuting them, continuing to detain them, as they have for example in France, or to subject them to other security procedures to ensure that they do not pose a threat.

The government of Australia, while we understand the frustration of the government about the length of time that it has taken to prosecute Mr Hicks, has felt that the appropriate thing to do is to have him prosecuted for his activities in training in Al Qaeda training camps in – since he could not be tried in Australia. And with respect to what would happen if he were acquitted, I believe that we have assured the Australian government that if acquitted that he would be returned to Australia.

**QUESTION:** Samantha Maiden from the Australian Newspaper again. Mr Bellinger, I was wondering if you could tell us a little bit about David Hicks as the US sees him. I'm not sure about how across the detail of his case you are, but there's been a view I think propagated in Australia from time to time by his supporters that he's a foolish adventurer, his lawyers at various points have suggested he was peeling potatoes for the Taliban and not much else. I was wondering if you could tell us a little bit about your views on that matter?

**BELLINGER:** Well, certainly the record has shown, and what has been put out, I think, and is available in the, the charges that have been sworn against him, and also previously put out, is that he was more than just an adventurer, that he had trained in three different Al Qaeda

training camps in – and had a significant amount of training from Al Qaeda, including undertaking surveillance operations and a significant amount of weapons training. So this – from our perspective are not the activities simply of an individual who is an adventurer.

**QUESTION:** Paul Maley from the Canberra Times. Just going back to the process side of it again, briefly. The various time clocks that are built into the process, the thirty day and one hundred and twenty day time clocks don't include, as I understand it, the time legal challenges to the Military Commission process may take to work through the Federal Court system, or the US civilian Court system, which I think under the old Tribunal system took about two years between when Hicks was charged to when he actually appeared before a Commission. Have any legal challenges to the Commission been lodged or do you anticipate any legal challenges?

**HODGKINSON:** It's difficult to speculate as to what legal challenges may arise. There could be any number of them, but again consistent with the previous Supreme Court ruling in the Handan case and otherwise, that the current Military Commissions Act, as constituted and with its procedures, is certainly anticipated to meet those things that the Supreme Court had hoped would be included. It is part of an effort between both the Administration and members of Congress, which is something the Supreme Court wanted to have happened.

As to how particular issues that may be litigated come out, it's too early to tell, but certainly as indicated previously by Mr Bellinger, we are hoping to

move forward and if there are challenges, there may be parts of the procedure that get slowed down, but certainly it's the intention of the government to move forward as swiftly as possible, and the government's position that this – these Military Commissions, as constituted, meet all the full and fair procedures that the Supreme Court was looking for.

**BELLINGER:** I've got to take my last question, but I will leave Sandy with you for as much time as you need.

**QUESTION:** Tim Lester from the Nine Network, John Bellinger. Perhaps if I could ask you this – you talk about the potential release of Guantanamo Bay inmates to their various countries if those countries undertook to place them under surveillance. You might or might not be aware that Australia has instituted significant surveillance laws post September 11. Had the Australian government made that request of the US government in the case of David Hicks, do you envisage that the US government would have at least considered the release of Hicks under surveillance in Australia, and if not, under what circumstances do you think the US government would have been willing to repatriate David Hicks?

**BELLINGER:** Well, I'm not going to speculate about what might have happened, because in fact I think the Australian government has done the appropriate thing here, from a – an international perspective. The – what is the best thing for the world community to do with an individual like David Hicks, of whom there are many others, who were training in training camps, and who many countries' laws do not have

Federal laws on their books that could deal with them? Australia – the Australian government looked hard at this, and concluded that the best way of dealing with that was to allow him to be tried in US Military Commissions, and again, we understand the frustration with the length of time, but I would –

Let me end with this by calling to your attention a report that came out last week from the UK's House of Commons, which is probably the most extensive report on Guantanamo other than the ICRC reports that are not public that has been issued. And they concluded in fact that Guantanamo in fact is filled with many dangerous people, and who pose a threat not just to the United States but to the international community, and that despite the world wide opprobrium that has been heaped upon the United States, that in fact the international community needs to look at what is the appropriate thing to do with these individuals who are at Guantanamo, and how to deal with the question of international terrorism. We appreciate the fact, despite the delays in the trial, that the Australian government has worked with us in having Mr Hicks be tried by the Military Commissions, and their concerns over a variety of issues have been raised to us regularly at multiple levels, and we look forward to moving forward with what we hope will be a rapid, full and fair trial.

So with that, I will leave you, I've appreciated the chance to be with you, and if you're through Washington, come and see me.

**QUESTION:** Hi, Sandy. John Kerin from the Australian. I just wondered if you had any up to date information on David Hicks'

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condition? And given the claims of mistreatment, can you shed any light on what the general treatment of detainees is?

**HODGKINSON:** For any specifics about Mr Hicks' condition, I would refer you to the Department of Defence, because you're asking for an update, and they will actually be in the best position to provide that to you.

Notwithstanding the general type and conditions of detention at Guantanamo Bay, again, as I'd indicated earlier, have evolved over time, I mean, it has gone from what was a quickly created detention facility to deal with the reality of the war on terror, and over time as many privileges and benefits that could be provided to detainees has been afforded. Those include, obviously, greater access to recreation such as sports and activities, a library has been created with greater access to materials, the greater access to free time and communal time has been created, obviously the food and conditions have improved over time, there's Halal meat for example at all times, they have very large meals every day with substantial calorific intake, and obviously the conditions have improved to the best that they can.

That notwithstanding, it's a detention facility, and they are still being detained at Guantanamo Bay. However, access to Counsel has improved again with the more ease of getting Counsel down there, transparency has certainly been something we've focussed a lot of attention on, more than a thousand foreign journalists have now been down to Guantanamo Bay, and again regular prayer five times a day is afforded to all detainees, they have

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arrows pointing in the direction of Mecca. For prayer time they are afforded prayer beads. Again, every, every measure is taken to try to make the detention situation as comfortable as possible while recognising that they are still being detained as enemy combatants.

**QUESTION:** Oh, hi Sandy, Kathy Novack from the Special Broadcasting Service here. John mentioned that if David Hicks were acquitted he would be returned to Australia. Can you clarify what would happen if he were found guilty?

**HODGKINSON:** Well, if Mr Hicks were found guilty, obviously we've had discussions with the Australian government, and at this time it's certainly believed that Mr Hicks may be able to carry out his incarceration, after the appeals process is complete, in Australia.

**QUESTION:** Cynthia Banham from the Sydney Morning Herald again. Just to clarify following on from that question, would any time that David Hicks has already served in Guantanamo Bay be deducted from any sentence he would have to serve in Australia?

**HODGKINSON:** Well, again, as Mr Bellinger was trying to make clear, the time that he has already been at Guantanamo Bay he has been contained consistent with the law of war as an enemy combatant, so not as a criminal Defendant per se. Whether or not any time that he has previously served will be credited will obviously be a matter for either the Commission's Judge to determine, and/or the facility at which he serves out his ultimate incarceration. So it would be too early to determine

whether or not that would be considered, but certainly there are procedures under which his Defence Counsel could request that.

**QUESTION:** Sandra, Rod McGuirk here from AP. Just further on the point that David Hicks would be repatriated if he were acquitted, what about the other two Defendants and subsequent Defendants if they were found not guilty?

**HODGKINSON:** Well, again, as a matter of the status of the individuals, all detainees at Guantanamo Bay are currently considered to be enemy combatants who are detained consistent with the law of war. Whether or not they are charged by Military Commission, that authority to detain them consistent with the law of war still exists, and therefore they could be detained following their actual acquittal.

Mr Bellinger was commenting specifically on the case of Mr Hicks. Obviously that would be something that would be a matter for consideration once that acquittal were to take place. But it has been clear that the basis for their detention has been as enemy combatants under the law of war, and whether or not they are taken to a Military Commission does not change that underlying status determination that they've all had.

**QUESTION:** Sandy, Sarah Smiles here from the Age. There have been – we have heard about human rights abuses taking place in Guantanamo Bay. I was just wondering what systems are in place at the moment to prevent that from happening again, and whether the prisoners have any recourse to report incidents, and how that is dealt with by the

system?

**HODGKINSON:** Again, as we indicated earlier, I mean, we take extremely seriously allegations of abuse, particularly any that could be viewed as credible allegations of abuse. And, and we've looked into them, we've had investigations, there have been investigations to look into all of those incidences. There's a number of ways that an individual detainee could express a concern over abuse. For example, they do meet regularly with members of the International Committee of the Red Cross. While those meetings with the International Committee of the Red Cross are not a matter of public record, that means the ICRC does not put them out in the public domain, we have the opportunity to review and read all of those.

In addition, when they have the opportunity for these interviews with members of the International Committee for the Red Cross, certainly if there was something that was noted by a member of the ICRC about the physical condition or that would support an allegation of abuse, I'm certain that they would also raise that to our attention.

In addition, there are in almost every aspect of the Guantanamo detention process there are a number of checks and procedures that are put in place and that have evolved over time to minimise as much abuse as possible, and that would include the facts that while questioning sessions are going on, there are other individuals who are monitoring anything that occurs in all of those rooms. There is also in addition to these various levels of individuals who monitor that, there are reporters and media that come down and do tour the facilities, and obviously anything that was noted

during that time period.

And lastly I would mention purely the fact that more than three hundred detainees at Guantanamo Bay are currently represented by Counsel, and that number is again when we're under – slightly under four hundred individuals left at Guantanamo Bay, that means nearly every detainee at Guantanamo Bay is in some capacity represented by Counsel who also could raise any allegations of abuse to us.

The last point that I would make is that on an annual basis more than ten thousand pieces of correspondence have been passing back and forth between detainees at Guantanamo Bay and their family members outside through the ICRC letter process. That's another place where they could certainly indicate to family members or others any complaints that they have of mistreatment, which would often either be turned around into their governments complaining to us through the diplomatic process, to their families releasing this in the public domain, so there are adequate and ample ways in which someone could complain if in fact they felt that their human rights were violated.

**ADAMCYK:** Okay, we have time for one more question, if anyone has a final question they'd like to ask Sandy? And if not, then we'll just thank you so much for speaking with us this morning Sandy, and thank you also to John Bellinger for being here. We'd like to thank all of you for coming, and for coming to the Office of Public Affairs this morning. Thank you very much.

END OF TRANSCRIPT

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